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Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

William K. VanCanagan, Esq.
J.R. Casillas, Esq.
DATSOPOULOS, MacDONALD & LIND, P.C.
201 West Main, Suite 201
Missoula, MT 59802
Telephone: (406) 728-0810
Fax: (406) 543-0134
Email: bvancanagan@dmllaw.com
jrcasillas@dmllaw.com

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Amicus Curiae

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 10-0142

KATHY HEFFERNAN, ROBIN CAREY,
DAVID HARMON, and NORTH DUNCAN DRIVE
NEIGHBORHOOD ASSOCIATION, INC.,

Plaintiffs, Petitioners, and Appellees,

-v-

MISSOULA CITY COUNCIL, CITY OF MISSOULA,
and JOHN ENGEN, Mayor,

Defendants, Respondents, and Appellants,

-v-

MUTH-HILLBERRY, L.L.C., Intervenor-Defendant and Appellant.

MONTANA ASSOCIATION OF REALTORS, INC.'S
MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

MONTANA ASSOCIATION OF REALTORS, INC., a Montana company (hereinafter “Applicant”), by and through its counsel of record, William K. VanCanagan and J.R. Casillas, of the law firm of Datsopoulos, MacDonald & Lind, P.C., hereby respectfully moves this Honorable Court, pursuant to M.R.App.P. 12(7), for an Order granting leave to file an amicus curiae brief in the above-entitled cause of action.

Applicant possesses a substantial interest in the Opinion and Order dated February 24, 2010, issued by the Montana Fourth Judicial District Court, Missoula County, Honorable Robert L. Deschamps III, and this Honorable Court’s decision on appeal.

More specifically, Applicant is interested in briefing the Court on the issue of whether the courts require a land use decision to substantially comply with the growth policy (previously called a comprehensive plan). Applicant concurs with Defendants and Appellants in that substantial compliance with the growth policy is not required.

Rather, pursuant to M.C.A. § 76-1-605 and interpretive common law authority, “after adoption of a growth policy, the governing body within the area covered by the growth policy pursuant to 76-1-601 must [only] be guided by and give consideration to the general policy and pattern of development set out in the

growth policy ...” See Citizen Advocates for a Livable Missoula v. City of Missoula, 331 Mont. 269, 130 P.3d 1259 (2006), et al.

Applicant concurs with Defendants and Appellants that the district court erred in relying on Little v. Board of County Comm’rs, 193 Mont. 334, 631 P.2d 1282 (1981), in support of its finding that the Rattlesnake Valley Comprehensive Plan Amendment: 1995 Update, is a regulatory document requiring that “all subdivision, zoning and rezoning requests should substantially comply with the land use recommendations of [a growth policy].” (Opinion and Order, 3:3-12, 2/24/10).

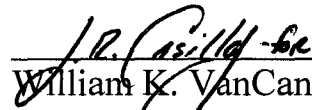
Applicant now seeks leave to brief the Court on the appropriate use of an adopted growth policy in the land use decision making and approval process. Applicant’s amicus curiae brief will enlighten the Court concerning the district court’s improper utilization of the growth policy as a subterfuge and per se basis for setting aside the City of Missoula’s December 17, 2007 decisions adopting zoning for and granting preliminary plat approval for the Sonata Park Subdivision in the Rattlesnake neighborhood of Missoula.

Applicant contacted counsel for Plaintiffs and Appellees, David K.W. Wilson, Jr., and Mr. Wilson consents to Applicant’s filing of an amicus curiae brief in this matter.

Applicant contacted counsel for Defendants and Appellants, Donald V. Snavelly and Jim Nugent, and both parties consent to Applicant's filing of an amicus curiae brief in this matter.

Applicant, pursuant to M.R.App. 12(7), hereby certifies its amicus curiae brief can be filed on or before July 15, 2010, the filing deadline for Appellant's opening brief.

DATED this 8th day of June, 2010



William K. VanCanagan
Attorney for Applicant

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Datsopoulos, MacDonald & Lind, P.C., hereby certify that a true and correct copy of the foregoing was mailed or faxed, postage prepaid, this 8th day of June, 2010, to the following:

Donald V. Snavelly
Snavelly Law Firm
P.O. Box 16570
Missoula, Montana 59808

Jim Nugent
City Attorney
City of Missoula
435 Ryman Street
Missoula, Montana 59802

David K.W. Wilson, Jr.
Reynolds, Motl and Sherwood, P.L.L.P.
401 North Last Chance Gulch
Helena, Montana 59601

By: 